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In re Application	:
Massey, et al.	:
Application No. 09/972,396	: DECISION ON APPLICATION
Filed: October 5, 2001	: FOR PATENT TERM ADJUSTMENT
Atty Docket No. ESSR:053US	:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§ 1.705(b)," filed April 29, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from three hundred six (306) days to three hundred twenty-nine (329) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **three hundred twenty-nine (329) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On April 13, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is three hundred six (306) days. On April 29, 2004, Applicants timely¹ submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is three hundred twenty-nine (329) days.

Applicants assert entitlement to a patent term adjustment of three hundred twenty-nine (329) days on the basis that the PTO improperly assessed Applicants a delay of thirty-five (35) days for responding to a Notice to File Missing Parts mailed on November 8, 2001. Applicants assert that they filed a response on February 20, 2002, and as such should only have been assessed delay of twelve (12) days.

Applicants do not state whether the patent issuing from the application is subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of three hundred six (306) days based on an adjustment for PTO delay of three hundred thirty-six (336) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and five (5) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delay of thirty-five (35) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b). The adjustment of thirty-five (35) days is at issue.

The adjustment of thirty-five (35) days has been found to be incorrect. A review of the application file reveals that a Notice to File Missing Parts of Nonprovisional Application was mailed on November 8, 2001. Applicants filed a complete response to this notice on February 20, 2002. As this was not timely pursuant to 37 C.F.R. § 1.704(b), applicant delay of twelve (12) days should have been assessed, not thirty-five (35) days.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is **three hundred twenty-nine (329) days** (341 days of PTO delay and 12 days of applicant delay).

The \$200.00 fee set forth in 37 C.F.R. § 1.18(e) has been charged to Deposit Account No. 50-1212, as authorized.

¹ Applicants filed the application for patent term adjustment prior to the payment of the issue fee.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen